



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

June 13, 2003

Ms. Michele Austin  
Assistant City Attorney  
City of Houston - Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR2003-4091

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 182744.

The City of Houston (the "city") received a request for information regarding investigations of two named city employees by the city's Office of the Inspector General ("OIG"). You claim that the requested information is excepted from disclosure under sections 552.101, 552.108, 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the information submitted as Exhibit 2 is excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that other statutes make confidential. You raise section 552.101 in conjunction with section 143.1214 of the Local Government Code. Section 143.1214 provides in part:

(b) The department shall maintain an investigatory file that relates to a disciplinary action against a fire fighter or police officer that was overturned on appeal, or any document in the possession of the department that relates to a charge of misconduct against a fire fighter or police officer, regardless of whether the charge is sustained, only in a file created by the department for the department's use. The department may only release information in those investigatory files or documents relating to a charge of misconduct:

(1) to another law enforcement agency or fire department;

(2) to the office of a district or United States attorney; or

(3) in accordance with Subsection (c).

(c) The department head or the department head's designee may forward a document that relates to a disciplinary action against a fire fighter or police officer to the [civil service] director or the director's designee for inclusion in the fire fighter's or police officer's personnel file maintained under Sections 143.089(a)-(f) [of the Local Government Code] only if:

(1) disciplinary action was actually taken against the fire fighter or police officer;

(2) the document shows the disciplinary action taken; and

(3) the document includes at least a brief summary of the facts on which the disciplinary action was based.

You indicate that the information submitted as Exhibit 2 relates to the OIG's investigations of allegations of tampering with an official record by the Fire Chief, another member of the fire department, and another city employee. You state that the OIG investigations in Exhibit 2 are held only by the fire department in a departmental file and are not part of any fire fighter's civil service personnel file. *See* Local Gov't Code § 143.1214(c); *see also* Local Gov't Code § 143.089(a)-(f). Based on your representations and our review of the information, we determine that the information in Exhibit 2 is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 143.1214 of the Local Government Code as information made confidential by law. *See also* Open Records Decision No. 642 (1996) (concluding that files relating to investigations of Houston Fire Department personnel by Public Integrity Review Group of Houston Police Department were confidential under section 143.1214).

Section 552.108(a)(2) of the Government Code excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. You represent that the audiotape submitted as Exhibit 3-A, and the documents submitted as Exhibit 3, pertain to a criminal case for which the Harris County District Attorney's Office declined prosecution. Upon review, we note that the documents in Exhibit 3 include several OIG records pertaining to administrative complaints. You have not explained, nor do the documents reveal, how these OIG records relate to the closed criminal investigation at issue. We therefore determine that the city has not demonstrated the applicability of section 552.108(a)(2) to the documents we have marked in Exhibit 3. Consequently, we conclude the city must release the marked

documents to the requestor. With respect to the remainder of the information in Exhibit 3 and the information in Exhibit 3-A, however, we find you have established that the information pertains to a criminal investigation that concluded in a final result other than conviction or deferred adjudication. We therefore agree that 552.108(a)(2) is applicable to the remaining information in Exhibit 3 and the audiotape in Exhibit 3-A.

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App. —Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). See Open Records Decision No. 127 (1976) (summarizing types of information considered to be basic information). Thus, with the exception of basic information, you may withhold the remaining information in Exhibit 3 from disclosure based on section 552.108(a)(2).

In summary, the city must withhold the information submitted as Exhibit 2 pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. We have marked documents in Exhibit 3 that may not be withheld pursuant to pursuant to section 552.108(a)(2) of the Government Code and must be released to the requestor. With the exception of basic information, the city may withhold the remaining information in Exhibit 3 pursuant to section 552.108(a)(2) of the Government Code. The city may withhold the audiotape in Exhibit 3-A pursuant to section 552.108(a)(2) of the Government Code. Based on this finding, we do not reach your other claimed exceptions to disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 182744

Enc: Submitted documents

c: Ms. Diana Rathjen  
5615 McKnight Street  
Houston, Texas 77035-2627  
(w/o enclosures)